IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.19637 M OF 2004

DATE OF DECISION: AUGUST 20, 2007

Pargat Singh

.....Petitioner

VERSUS

State of Punjab

....Respondent

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. A.P.S.Deol, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

The petitioner, who is ordered to face trial under Section 182 IPC, has impugned the same by way of present petition by invoking the bar laid down in Section 195 of the Code of Criminal Procedure.

The petitioner, who moved an application before Deputy Commissioner, Mansa, against Sukhwinder Singh son of Chaman Singh, Jugraj Singh son of Harcharan Singh and Luddar Ram son of Sada Ram, complaining that they had broken the locks of his quarter and took away two presence registers, two cots, one T.V. and other utensils. Allegation further is that they then broke open the locks of Science room of the school from where they took away many books and other articles. On the basis of this complaint, FIR No.145 dated 22.11.2000 under Section 454/380 IPC was registered at Police Station,

Mansa. The persons complained against, however, were discharged by the Chief Judicial Magistrate on 13.3.2002, observing that the FIR was registered due to personal enmity. Maghar Singh accordingly moved an application before Senior Superintendent of Police for taking action against the petitioner under Section 182 I.P.C. On the basis of this complaint, proceedings are initiated against the petitioner for an offence under Section 182 IPC.

The petitioner pleaded before the Chief Judicial Magistrate that proceedings under Section 182 I.P.C. can not be continued against him in view of the bar laid down under Section 195 Cr.P.C. Submission is that Court can not take cognizance in such cases except for a complaint of a public servant to whom the complaint was made. It is pointed out that complaint was filed by Pargat Singh before Deputy Commissioner and as such, he alone would be competent to file this complaint, which may lead to an offence under Section 182 I.P.C. whereas the complaint in the present case was presented by SHO on the basis of a calendra. The Chief Judicial Magistrate summoned the original file and noticed that the complaint by the petitioner was presented before the Deputy Commissioner, which was sent to S.S.P., Mansa, for proper and necessary action. The same was marked to S.S.P. (H). Finding that the case was registered by the S.H.O., the Court viewed that the argument advanced by the counsel that Deputy Commissioner alone was competent to file this complaint was without merit. The petitioner impugned the said order by filing a revision before the Additional Sessions Judge, Mansa, who dismissed the same by noticing that the lower Court had gone through the record and as such, there was

no illegality or infirmity in the impugned order. In this background, both the orders are challenged by way of present petition under Section 482 Cr.P.C.

Notice having been issued in this case, counsel for the respondent has put in appearance and filed reply.

I have heard learned counsel for the parties.

Mr.A.P.S.Deol, counsel for the petitioner, would contend that provisions of Section 195 Cr.P.C. unambiguously provide that no Court shall take cognizance of an offence punishable under Sections 172 to 188 of IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate. He would also refer to the record to show that the complaint in this case by the petitioner was addressed to the Deputy Commissioner. According to him, the complaint in this case, as such, could only be filed by the Deputy Commissioner to whom it was given. He has relied upon the cases of ***Daulat Ram Vs. State of Punjab,*** AIR 1962 Supreme Court 1206, ***Randhir Vs. The State of Haryana and others,*** 2004 Cri.L.J. 479, ***Harbans Singh Vs. State of Punjab and another,*** 1991 (3) R.C.R. (Criminal) 113 and ***Pawan Kumar Vs. State of Haryana,*** 1994 (2) R.C.R. (Criminal) 130 in support of his submission. The Hon'ble Supreme Court in the case of Daulat Ram (supra) held in no uncertain terms that there is an absolute bar against the Court taking seisin of the case under Section 182 Cr.P.C. except in the manner provided by Section 195 of Cr.P.C. In Randhir Singh's case (supra), this Court took a view that for an offence of giving false information to a public servant,

complaint can be filed by public servant to whom a false information is given and complaint filed by his subordinate was termed as improper. In Malkiat Singh's case (supra), S.H.O. was held not competent to make the complaint under Section 182 IPC as the false information in this case was given to Superintendent of Police. Similarly, in Harbans Singh's case (supra), this Court took the view that Court can not take cognizance of an offence under Section 182 IPC on a complaint filed by Sub Inspector of Police in a case where the false complaint was made to Senior Superintendent of Police.

Mr.Berry appearing for the State has tried to justify the impugned order by saying that matter in this case was investigated by the S.H.O. and as such, he was competent to file this complaint and the Court has rightly taken cognizance of the same.

Having considered the rival contentions made before me, I can say that position in law is fully settled and the same does not require any further elaboration. As held by the Hon'ble Supreme Court, no Court can take cognizance on a complaint filed by any public servant to whom the false complaint is not addressed. The Public servant concerned so far an offence under Section 182 IPC is concerned would clearly mean a public servant to whom the false information is given. Public servant concerned, as such, would be a public servant to whom the complaint is filed and not the one to whom the complaint may be sent for inquiry. Thus, SHO or Inspector to whom the complaint is sent for investigation can not be termed as public servant concerned and not competent to make a complaint under Section 182 IPC.The conceded position in the present case is that the petitioner had addressed the complaint in this case to the

Deputy Commissioner. Even if the complaint was subsequently marked to Superintendent of Police or other police officials for investigation, it can not be said that the said officer is the concerned public servant to make a complaint under Section 182 IPC. As held in above noted cases, under such circumstances, Deputy Commissioner alone would be competent to file this complaint under Section 182 IPC. Even in case where complaint filed before one police station was sent for investigation to other police station in whose jurisdiction the offence was allegedly committed and the later police station initiated the proceedings for an offence under Section 182 IPC, these were held to be without jurisdiction. See **T.P.Singh** v. **State, 1966 A.L.J. 980.** The present complaint concededly has been filed by S.H.O. Accordingly, the action of the Court in taking cognizance of an offence under Section 182 IPC on the basis of this complaint is clearly barred by provisions of Section 195 Cr.P.C.

Following the ratio laid down in the judgments noted above, the petition is allowed and the impugned orders dated 20.10.2003 passed by CJM, Mansa and dated 9.2.2004 by Addl. Sessions Judge, Mansa, are quashed. However, it is made clear that it would be still open for the Deputy Commissioner to file complaint in this case.

August 20, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**